

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Luke Petrinovic	Team: Squad #1	CCRB Case #: 201701944	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/07/2017 6:00 AM	Location of Incident: § 87(2)(b)	Precinct: 108	18 Mo. SOL 9/7/2018	EO SOL 9/7/2018	
Date/Time CV Reported Tue, 03/07/2017 8:50 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/13/2017 11:01 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Maribel Burgos	00324	933556	DB GLD
2. SGT Richard Mezzatesta	03513	930735	GANG QS
3. DT3 Michael Obrien	810	946068	GANG QS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. CPT Vincent Tavalaro	00000	937610	GANG QS
2. DT3 Javier Munoz	3421	935373	DB FCTF
3. DT3 Emmanuel Camilo	1956	944253	DB GLD
4. LT Peter Iemma	00000	920416	GANG QS
5. POM Keith McNicholl	05855	954122	DB GLD
6. POM Junior Celestin	11614	941524	GANG QS
7. DT3 Michael Duffy	04041	923787	GANG QS
8. DT3 Rock Pereira	03045	930932	GANG QS

Officer(s)	Allegation	Investigator Recommendation
A.SGT Maribel Burgos	Abuse: Sergeant Maribel Burgos entered and searched § 87(2)(b) in Queens.	§ 87(2)(b)
B.DT3 Michael Obrien	Force: Detective Michael O'Brien used physical force against § 87(2)(b)	§ 87(2)(b)
C.SGT Richard Mezzatesta	Force: Sergeant Richard Mezzatesta used physical force against § 87(2)(b)	§ 87(2)(b)
D.SGT Maribel Burgos	Discourtesy: Sergeant Maribel Burgos spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E.SGT Maribel Burgos	Abuse: Sergeant Maribel Burgos threatened to arrest § 87(2)(b)	§ 87(2)(b)
F.SGT Maribel Burgos	Abuse: Sergeant Maribel Burgos threatened to notify Administration for Children's Services.	§ 87(2)(b)

### Case Summary

On March 7, 2017, § 87(2)(b) filed this complaint over the phone with the Internal Affairs Bureau. It was referred to the CCRB and received on March 13, 2017, under log number 17-8687.

On March 7, 2017, at approximately 6:00 a.m., officers under the supervision of Sgt. Maribel Burgos, of the Grand Larceny Division of the Detective Bureau, executed a search warrant at § 87(2)(b), in Queens (**Allegation A**). This is the home of § 87(2)(b) her § 87(2)(b)-year-old son § 87(2)(b) her § 87(2)(b)-year-old daughter § 87(2)(b) her five other children all below the age of ten, and several additional people who § 87(2)(b) rents rooms to. During the execution, several officers handcuffed § 87(2)(b) as well as § 87(2)(b). During this handcuffing, Det. Michael O'Brien, of Queens South Gang Squad, allegedly struck § 87(2)(b) and Sgt. Richard Mezzatesta, also of Queens South Gang Squad, forcibly took § 87(2)(b) to the ground (**Allegations B and C**). After the officers secured the location, Sgt. Burgos entered the apartment to supervise the search. Sgt. Burgos spoke to § 87(2)(b) and allegedly complained about her "fucking children" and said that § 87(2)(b) was a "bitch" (**Allegation D**). Sgt. Burgos allegedly threatened to arrest § 87(2)(b) and with contacting the Administration for Children's Services (**Allegations E and F**). The officers completed their search and arrested § 87(2)(b), one of § 87(2)(b)'s tenants. § 87(2)(b) and § 87(2)(b) were not arrested.

There was no video footage covering the incident.

### Mediation, Civil and Criminal Histories

- Due to the execution of a search warrant, this case was not eligible for mediation.
- On § 87(2)(b), § 87(2)(b) filed a Notice of Claim with the New York City Comptroller's Office related to this incident. In it, she claimed that officers unlawfully entered her home, grabbed her, and caused her to fall to the ground. She states that the actions resulted in physical and emotional injuries, and that she is seeking a yet to be determined monetary sum as compensation (Board Review 01). There have not yet been any hearings in this case.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

### Civilian and Officer CCRB Histories

- This is the first CCRB case involving § 87(2)(b) (Board Review 03).
- Sgt. Burgos has been the subject of 21 prior CCRB allegations across six cases during her thirteen year tenure with the NYPD. Only one of these concerned a discourtesy, and it was unsubstantiated. None of these allegations concerned threats to call ACS. There has been one substantiated CCRB allegation made against Sgt. Burgos (Board Review 04):
  - In case 200504852, Sgt. Burgos was found to have issued a retaliatory summons. A command discipline was recommended by the CCRB, and the NYPD issued instructions.
- Det. O'Brien has been the subject of one other CCRB allegation in one other case during his nine year tenure with the NYPD. The allegation concerned the entry of a premise, and it was exonerated (Board Review 05).

- Sgt. Mezzatesta has been the subject of four other CCRB allegations in three other cases during his fifteen year tenure with the NYPD. One of these allegations concerned the use of force, and it was closed as unsubstantiated. Sgt. Mezzatesta has never been the subject of a substantiated CCRB allegation (Board Review 16).

### **Potential Issues**

- § 87(2)(b) was initially uncooperative with the investigation, and would not respond to attempts to schedule her for an interview for a number of weeks. Eventually, an interview was able to be scheduled with her through her civil attorney; however, § 87(2)(b) did not bring § 87(2)(b) to the interview. She was called multiple times after her interview in an attempt to obtain a statement from § 87(2)(b) but she would not allow the CCRB to speak with him. § 87(2)(b) is the only witness to the incident, aside § 87(2)(b) who is above the age of nine. Furthermore, § 87(2)(b) refused to sign HIPAA forms authorizing the CCRB to access her medical records, instead asking the investigation to liaise with her attorney to acquire these documents. Attempts have been made to obtain these documents from the attorneys, but they have so far been unsuccessful. § 87(2)(g)

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- § 87(2)(b) described the officer who used force against her as a white male, with blue eyes, who was one of the first officers to enter her room. § 87(2)(g)
- § 87(2)(g)

#### **Allegations not pleaded**

- § 87(2)(g)

#### **Allegation A – Abuse of Authority: Sergeant Maribel Burgos entered and searched § 87(2)(b), in Queens.**

It is undisputed that Sgt. Burgos supervised the entry and search of § 87(2)(b) § 87(2)(b), in Queens. It is also undisputed that officers had obtained a valid search warrant, authorizing their search of the apartment (Board Review 06). Although the officers were looking for an individual that rented a room from § 87(2)(b) § 87(2)(b), § 87(2)(b) explained that her living quarters are not officially separated from his, and they share the same address and doorbell.

§ 87(2)(g)

**Allegation B – Force: Detective Michael O’Brien used physical force against § 87(2)(b)**

It is undisputed that Det. O’Brien used force against § 87(2)(b) § 87(2)(g) § 87(2)(b) (Board Review 07) stated that she was standing in her room, having just gone to the bathroom. Det. O’Brien broke down the door to her room. Then Det. O’Brien grabbed her by her back and pushed her to the floor. Once on the floor, Det. O’Brien punched § 87(2)(b) on the left side of her face, and kicked her twice in the knees. She was placed in handcuffs soon after. § 87(2)(b) (Board Review 08) also testified that § 87(2)(b) was kicked in the legs shortly before being placed in handcuffs, but did not witness any officer strike her in the face. § 87(2)(b) stated that she suffered from pain in her abdomen from the incident, as it exacerbated a scar from a cesarean section she had had over one year prior. In addition to this, she stated she sustained a cut to the inside of her mouth from the strike to the face and bruises from the kicks to her legs.

Of the officers interviewed, only Det. O’Brien (Board Review 09), Sgt. Richard Mezzatesta (Board Review 10), Lt. Peter Iemma (Board Review 11), and Det. Rock Pereira (Board Review 12), all assigned to the Queens South Gang Squad, were present for the struggle with § 87(2)(b) and Det. Pereira was unable to describe it in detail. Det. O’Brien stated that officers saw § 87(2)(b) run into her room and close the door when they initially entered the apartment. The officers followed her and entered the room, pushing past § 87(2)(b) who was holding the door closed. Once inside the room, Det. O’Brien grabbed § 87(2)(b) by the arms in order to place her in handcuffs. Before he could do so, § 87(2)(b) jumped on his back and he let go of § 87(2)(b) to deal with him. Det. O’Brien had no further interaction with § 87(2)(b) and never saw her on the ground. He never struck § 87(2)(b) or saw another officer do so.

Sgt. Mezzatesta’s testimony was consistent with Det. O’Brien’s. He witnessed Det. O’Brien grab § 87(2)(b) by the arms after she attempted to hold the door closed on the officers. He saw § 87(2)(b) jump on Det. O’Brien’s back, and saw Det. O’Brien let go of § 87(2)(b). He never witnessed any further interaction between § 87(2)(b) and Det. O’Brien, and never witnessed any officer strike § 87(2)(b).

Lt. Iemma’s also denied that any officer struck § 87(2)(b) but stated that it was § 87(2)(b) § 87(2)(b) who jumped on Det. O’Brien’s back after they pushed into her room. He stated that § 87(2)(b) § 87(2)(b) later threw herself to the ground while officers that Lt. Iemma could not recall where handcuffing her, but he denied that any officer ever struck her.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation C – Force: Sergeant Richard Mezzatesta used physical force against § 87(2)(b)**

It is undisputed that § 87(2)(b) was forcibly taken to the ground by Sgt. Mezzatesta, as is the fact that § 87(2)(b) attempted to physically intervene in the handcuffing of § 87(2)(b). § 87(2)(b) was the only witness to the alleged force, as § 87(2)(b) would not cooperate with the CCRB in attempts to obtain a statement from § 87(2)(b) § 87(2)(b) stated that § 87(2)(b) approached the officers shortly after they had handcuffed § 87(2)(b) and attempted to grab Det. O’Brien. He was then pushed to the ground by Sgt. Mezzatesta, and placed in handcuffs by Det. O’Brien.

Sgt. Mezzatesta stated that he observed § 87(2)(b) jump onto Det. O'Brien's back and wrap his arms around Det. O'Brien's neck while he was struggling with § 87(2)(b). He grabbed § 87(2)(b) from behind by his shoulders, and forcibly placed him face down on the floor, where he was quickly handcuffed. Det. O'Brien's testimony was entirely consistent with Sgt. Mezzatesta's, as was that of Lt. Iemma, although Lt. Iemma recalled this struggle as occurring after Det. O'Brien's struggle with § 87(2)(b) as opposed to during. Neither Det. Pereira nor any other officer at the scene witnessed this struggle.

Under the provisions of Patrol Guide Procedure 221-01, officers are permitted to use force to take an individual into custody, provided that the force is reasonable under the circumstances (Board Review 17).

§ 87(2)(g)

**Allegation D – Discourtesy: Sergeant Maribel Burgos spoke discourteously to § 87(2)(b)**

**Allegation E – Abuse of Authority: Sergeant Maribel Burgos threatened to arrest § 87(2)(b)**

§ 87(2)(b)

**Allegation F – Abuse of Authority: Sergeant Maribel Burgos threatened to notify Administration for Children's Services.**

§ 87(2)(b) alleged that Sgt. Burgos came into her apartment after the officers that initially entered had left. Sgt. Burgos spoke with § 87(2)(b) about what was going on, and explained that the officers were there looking for an individual, who's name § 87(2)(b) recognized as a man to whom she rented a room. They spoke in Spanish, as § 87(2)(b) does not speak English and understands only a little. While there were talking, Sgt. Burgos appeared to get upset and said, in English, "fucking children" and "bitch," referring to § 87(2)(b) and her children. Then Sgt. Burgos showed § 87(2)(b) a document she did not recognize or understand, and told her to sign it or she would arrest her and contact the Administration of Children's Services (ACS) and have her children taken away. § 87(2)(b) agreed to sign the paper, and the officers eventually left.

§ 87(2)(b) was present for the interaction with § 87(2)(b) and Sgt. Burgos, although she was not part of the discussion and was in an adjacent room. She stated that Sgt. Burgos said "fucking children," but did not hear Sgt. Burgos say "bitch" or threaten arrest § 87(2)(b) or to notify ACS.

Of the officers involved in the search of the apartment only Sgt. Burgos (Board Review 13), PO Keith McNicholl (Board Review 14), and PO Junior Celestin (Board Review 15), all of them at the time assigned to the Grand Larceny Division of the Detective Bureau, were present in § 87(2)(b)'s room after the entry team left. However, neither PO McNicholl nor PO Celestin recalled being present while any officer was speaking with § 87(2)(b) and both denied hearing any discourtesy or threats to arrest § 87(2)(b) or contact ACS. Sgt. Burgos recalled speaking with § 87(2)(b) and recalled that § 87(2)(b) was upset and argumentative; however, she denied ever using any profanity or threatening to arrest § 87(2)(b) or to contact ACS. She also denied ever asking § 87(2)(b) to sign anything.

§ 87(2)(g)

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Signature	Print	Date
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Title/Signature

Print

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Title/Signature	Print	Date
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